Supreme Court, U.S.
FILED

10-988 JAN 27 2010

OFFICE OF THE CLERK

No. _____

In The
Supreme Court of the United States

HERMAN ASTER, Plaintiff and Appellant,

vs.

PETER WARD et al., Defendants and Respondents.

On Petition For Writ Of Certiorari
To The Court Of Appeal
For The State Of California Sixth Appellate District.

PETITION FOR WRIT OF CERTIORARI

The Petitioner
HERMAN ASTER,
2167 Riordan Drive
San Jose, California, 95130
Telephone (408) 378-1457

QUESTION PRESENTED FOR REVIEW

In question is failure of appellate court to "reliably discern almost nothing about the appeal" after its own actions to obscure all evidence in support of the case.

THE PARTIES ARE

The Plaintiff and Appellant Herman Aster

The Defendants and Respondents PETER WARD et al., represented by attorney Garret R. Wynne, BN 220665, at KEESAL, YOUNG & LOGAN,
450 Pacific Avenue, San Francisco, CA 94133
Phone: 415-398-6000, Fax 415-981-0136

Attorney Dolly Ares, BN 87786
514 Monterey Street, Hollister, CA 95023
Phone: 831-637-6775

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PETITION FOR WRIT OF CERTIORARI

CITATIONS OF ORDERS AND OPINIONS

H034952 in Court of Appeal,
Augmentation of Record denial (App. 3)

H034952 in Court of Appeal,
Opinion (App. 1)

H034952 in Court of Appeal,
Petition for Rehearing denial (App. 4)

S186797 in Supreme Court of California
Petition for Review denial (App.5)

STATEMENT ON BASIS FOR JURISDICTION

Appellate opinion to be reviewed was filed August 19, 2010

Petition for Rehearing, denied September 2, 2010

Petition for Review in Supreme Court of California denied November 10, 2010

All remedies in lower courts are exhausted.

CONSTITUTIONAL PROVISION

This appeal relies on compliance with Constitution of US Supreme Court Rule 10(a) "a United States court of appeals ... has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by lower court, as to call for an exercise of this Court's supervisory power."

STATEMENT OF THE CASE

I, Herman Aster petition for a writ of certiorari to review the appellate opinion on affirmation of judgment in Superior Court case CV102611 issued before the case proceeds to trial.

Brief history of the Case:

In associated case FL086124 now in this court as 10-861, the Petitioner's attorney Dolly Ares made fraudulent statement to Bank of New York that certain certificates of stock for 3000 shares of BP Prudhoe Bay are lost, stolen or destroyed while well understood said certificates are to this date in my hands. In consequence, I have been defrauded for

approx. $150,000 of 2007 value. Failing to straighten the matter up with Bank of New York, on recommendation of Securities and Exchange Commission, I filled November 15, 2007 in District Court the Complaint C07-05799 MHP. The action has been dismissed December 28, 2007 on perceived lack of subject matter jurisdiction and re-filled January 4, 2008 in Superior Court as 108CV102611.

After three CMC's, defendants systematically stalling the proceedings, August 21, 2008 I served Deposition Subpoena to produce "A document reporting BP Prudhoe Bay certificates No. 16079 and 20024 lost, stolen or destroyed". The Defendants ignored the subpoena and in subsequent legal wrangling repeatedly attempted to dismiss the case. My appeals H034009 dealt with Subpoena and H034313 with Judgment on Pleadings. Before any resolution Superior Court issued September 22, 2009 order granting Motion to enter Judgment in favor of Defendants.

My current appeal H034952 followed. Court of Appeal dismissed April 27, 2010 both H034009 and H034313 (App. 2, footnote) as "having been taken from non-appealable order" and denied my motion to augment record on H034952 (App. 3) by transcripts from both, eliminating

any relevant evidence. Text of Opening Brief (App. 6) and Oral Argument (App. 7) are included to document proceedings in appellate court.

Notes on Appellate Opinion.

Jurisdiction of Superior Court and not Court of Appeal is in question. (App. 6 - The court seems be ...)

The Court of Appeal is refusing to recognize that at the core of dealing with securities is fraud inspired by attorney Dolly Ares and readily utilized by the Defendants.

Motion for judgment on pleading granted on the ground of my failure to amend within allotted time is cover-up for another fraud exposed in dismissed appeal H034313.

REASONS FOR GRANTING THE PETTITION

The Appellate Court departed from accepted and usual course of judicial proceedings by eliminating the evidence in ways reminiscent of trials in courts of now defunct Soviet Empire, ways I had unfortunate opportunity to experience in my younger days.

Maintenance of trust in Court's fairness is in public interest.

CONCLUSION

The objective of this appeal is to let the case 108CV102611 proceed to trial. It is with regrets, I had to go to Supreme Court of the country.

Respectfully submitted on January 25, 2011

Herman Aster

Appellate opinion

NOT TO BE PUBLISHED FILED Aug 19, 2010

IN THE COURT OF APPEAL OT THE STATE OF CALIFORNIA SIXTH APPELLATE DISTRICT

HERMAN ASTER, Plaintiff and Appellant,
v.
PETER A. WARD et al., Defendants and Respondents

H034952
(Santa Clara County Super. Ct. No. CV102611)

Plaintiff Herman Aster brought this appeal from an order granting a motion by defendants Peter A. Ward and Bank of New York (Bank) seeking entry of judgment. The order is apparently an appealable judgment since it contains the recital, "Judgment is hereby entered in favor of defendants ..." Beyond the apparent fact of our jurisdiction, almost nothing about the appeal can be reliably discerned. According to the remarks of defendants' attorney at the hearing below, the court had granted a motion for judgment on pleadings with leave to amend; plaintiff had failed to amend within the allotted time; and defendants sought entry of judgment accordingly. Plaintiff contested none of these assertions but alluded to pendency of matters

in this court which, he asserted, deprived the trial court of jurisdiction. [1]

On appeal plaintiff is no more forthcoming. He presumably deems himself aggrieved by the order appealed from, but furnishes no basis whatsoever to entertain the possibility that it is product of error. The record contains none of relevant pleadings or moving papers. No authority is cited; under the heading "Table of Authorities" appears the legend, "No authorities are listed. Common sense is assumed"

DISPOSITION

The judgment is affirmed

RUSHING.P.J.

WE CONCURE: PREMO, J., DUFFY, J.

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[1] Plaintiff alludes in his brief to the matters of *Aster v. Ward et al.*, No H034313 and *Aster v. Ward et al.*, No. H034009, stating that the order here was an "attempt to dismiss th[is] case before [those matters] are resolved." We note that on April 27 of this year those cases were both dismissed for want of an appealable order

Augmentation of record denied

COPY FILED MAY 20 2010

IN THE COURT OF APPEAL OT THE STATE OF CALIFORNIA SIXTH APPELLATE DISTRICT

HERMAN ASTER, Plaintiff and Appellant,
v.
PETER A. WARD et al., Defendants and Respondents

H034952 Santa Clara County No. CV102611

BY THE COURT:

Appellant's motion to augment the record on appeal filed April 30, 2010 and May 6, 2010, are hereby ordered denied.

Date: MAY 20 2010 RUSHING, P.J. P.J.

Petition for rehearing denied

COPY FILED SEP 2 2010

IN THE COURT OF APPEAL OT THE STATE OF CALIFORNIA SIXTH APPELLATE DISTRICT

HERMAN ASTER, Plaintiff and Appellant,
v.
PETER A. WARD et al., Defendants and Respondents

H034952 Santa Clara County No. CV102611

BY THE COURT*:

Appellant's petition for rehearing is denied.

Date: SEP 2 2010 RUSHING, P.J. P.J.

* Before Rushing, P. J., Premo, J. and Duffy. J.

Petition for review denied

FILED NOV 10 2010

Court of Appeal, Sixth Appellate District – No. H043952

S186797

IN THE SUPREME COURT OF CALIFORNIA

En Banc

HERMAN ASTER, Plaintiff and Appellant,
v.
PETER A. WARD et al., Defendants and Respondents

Petition for review is denied

Corrigan, J., was recused and did not participate.

GEORGE
Chief Justice

H034952 Text of the body of Opening Brief

In nature of this action is appellants' request to set aside Order granting Defendants Bank of New York and Peter A. Ward Motion to enter Judgment in favor of Defendants (Clerk's Transcript page 1) as an attempt to dismiss the case before appeals H034313 and H034009 are resolved.

Consequently, **The Order appealed from is final.**

Summary of significant facts.

The Court, already fourth on the case, admits not having opportunity to review the file. (Reporter's Transcript page 3, 21)

Defendants reasoning the plaintiff failed to file an amended complaint (RT 4, 1) is addressed in ignored Opening Brief of appeal H034313.

Defendant's remarks on background of this case (RT 4, 7) are unexplained and at this stage irrelevant.

The court seems be somehow upset by plaintiff's statement it is out of jurisdiction (RT 4, 27) even after being reminded the case is in appeal.

In the following litany (RT 5, 3-24) labeling, but not yet charging plaintiff as vexatious Mr. Wynne is demonstrating his arrogance of an attorney litigating against pro per acutely aware his deficiency of not contributing to judiciary reelection campaigns. However his believe the merit-less appeals will be in short order dismissed remain unfulfilled.

The plaintiff sums up reminding again, the case is twice in appeal, is about securities fraud and did not yet pass discovery phase. (RT 6, 1-8)

Last Trial Setting Conference on September 22, 2009 is continued to October 20 and than vacated without notice or hearing. (See Register of Actions/Calendar Events) The Case Management Statement (CT 4-7) was filed on October 14. Appeal H034952 follows.

In conclusion

The Appellant begs the Court of Appeals to dismiss the Grant to enter judgment as premature, resolve outstanding appeals and let the case 108CV102611 proceed to trial as already prayed for in H034313.

San Jose, February 22, 2010 Herman Aster

H034952 Text of Oral Argument

Presented July 15, 2010

Honorable Court of Appeal, here I, Herman Aster present Oral argument in appeal H034952 compelled by developments since this case has been filed.

In short recapitulation of calendar, in the case 1-08-CV102611filed in January 2008, two appeals from orders of different judges has been filed:

H034009 taken from order of honorable Socrates Manoukian filed March 19, 2009 dealing with completion of discovery.

H034313 taken from order of honorable James Emerson filed June 9, 2009 to set aside judgment on pleadings. Reasons were clearly stated in Opening Brief.

Both briefed only by myself, after considerable investment

of my time, were dismissed April 30, 2010 being perceived as taken from non-appealable orders without an Opinion issued.

Motion to augment the record of this appeal by Clerk's Transcripts has been denied forcing me to request Oral argument to bring attention to obscured litigation in case 109CV102611.

I did revive diligently Respondents' Brief in this appeal, rich in precedents but lean or false in substance. I found nothing but earlier already argued what would be worth of Reply. Apparently attorney Garret Wynne relies on his capacity to come to Superior Court with a motion declaring Roman Pope a Lutheran and succeed.

However in the Docket is irrefutable evidence that this case never exited Discovery phase. Two subpoenas have been served by September 2008 (Docket entries 0012 and 0014) and in the reminder of docket there is no evidence those have been responded to or considered by any judge. Defendants apparently believe they successfully covered-up petitioner's fraud in associated case 1-99-FL086124 alleged in the Complaint.

In conclusion, after 32 months of litigation defrauded of approximately $193,000, I beg the Court of Appeal to compel defendants to completion of Discovery and let the case proceed to the trial.